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9 UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 JOHN EDWARD MCGINNIS,

15 Defendant.

Case No.: 2:20-CR-00091-RMP-1

United States' Sentencing  
Memorandum

16 Plaintiff, United States of America, by and through United States Attorney  
17 Vanessa R. Waldref and Assistant United States Attorney Richard R. Barker, submits  
18 the following sentencing memorandum. For the reasons set forth herein, the United  
19 States respectfully seeks of a period of incarceration of three hundred months,  
20 followed by a three-year term of supervised release.

21 **STATEMENT OF FACTS**

22 On or about June 1, 2020, Defendant arrived at the home of L.C. When  
23 Defendant arrived, L.C.'s two grandchildren Minor 1 (age 13) and Minor 2 (age 9)  
24 were also at the home. ECF No. 55 at ¶ 11-12. Shortly after he got there, Defendant  
25 left for a walk. *Id.* at ¶11. When Defendant returned, he was acting strangely and  
26 seemed agitated. *Id.* Defendant then accused Minor 1 of being a "snitch" and grabbed  
27 the child's cellular telephone and shattered it. *Id.* Defendant then pulled out a .22  
28 revolver and demanded that Minor 1 and Minor 2 shoot him. *Id.* at ¶16. When they

1 refused, Defendant began firing the gun in the residence, repeatedly discharging the  
2 gun, firing shots into a bedroom and a hallway. *See id.* Defendant shot at the walls,  
3 the ceiling, a lit candle, and the running air conditioner. *Id.* at ¶12. Even after the  
4 gunshots, Defendant refused to allow L.C. to turn off the air conditioner, and it  
5 subsequently caught fire. *Id.* Defendant then directed his focus to L.C. *See id.* at ¶  
6 13. He demanded the keys to her truck. *Id.* at ¶11. When she refused, Defendant  
7 punched a hole in the wall. *Id.* L.C. feared that because of Defendant’s irrational  
8 behavior and the firearm in his possession, he may kill her and her grandchildren.  
9 *See id.*

10 Defendant then forced L.C. and her two grandchildren into a room and did not  
11 permit them to leave that room for approximately 30 minutes. *Id.* at ¶12. While there,  
12 Defendant continued to discharge the firearm. *Id.* Once Defendant finally permitted  
13 L.C. and the children to leave the room, he forced them, at gunpoint, into L.C.’s  
14 black Toyota Tacoma. *Id.* at ¶13. Inside the vehicle, Defendant demanded everyone  
15 to act like a happy family, and he instructed L.C. to drive to a trailer parked on Owhi  
16 Lake Loop Road, where Defendant had been staying. *Id.*

17 When they got to the trailer, Defendant got out of the truck and went inside.  
18 Defendant then lit the curtains on fire as L.C. and the children looked on. *Id.* The  
19 trailer was a total loss – burned until only the frame was left. *Id.* After the trailer was  
20 destroyed, Defendant got back into the vehicle and demanded L.C. to drive in the  
21 direction of Coulee Dam, Washington. *Id.* at ¶14. While driving, Defendant  
22 continued to shoot the .22 caliber revolver – firing out the window. *Id.* Defendant  
23 would waive the gun around, threatening L.C. and her two grandchildren and yelling  
24 at them to “shut up” before firing out the window again. *Id.* At one point, Defendant  
25 put the firearm in his mouth and demanded that Minor 2 (age 9 at the time) pull the  
26 trigger. *Id.* at ¶ 16. Even after Defendant ran out of ammunition, he continued to fire  
27 the gun which resulted in a clicking sound each time. *Id.* at ¶ 14. Minor 1 estimated  
28 that Defendant fired 6 shots at the home and 9 additional shots while in the truck on

1 the way to Grand Coulee. *Id.* Minor 1 also saw Defendant reload the firearm at one  
2 point. *Id.*

3 Eventually L.C. was able to convince Defendant to let her and the  
4 grandchildren out because they needed to go to the bathroom. *Id.* at 15. Defendant  
5 stopped at the Coulee medical center at a little after 10:00 p.m. *See id.* After escaping  
6 from Defendant, L.C. was then able to contact police. *Id.* Before police arrived,  
7 however, Defendant drove away in L.C.'s pickup truck without her permission. *Id.*  
8 Though L.C. and her grandchildren were able to escape, Defendant's crime spree  
9 continued after L.C. and the children went into the hospital. *See id.* at ¶¶15, 22.

10 After leaving L.C. and her grandchildren at the Coulee Medical Center,  
11 Defendant drove to the home of Minor 3 (then age 17) in Grand Coulee, Washington.  
12 Defendant arrived sometime a little after 10:00 p.m. *Id.* at ¶ 22. Minor 3 heard a loud  
13 knock on the backdoor, and assuming it was her boyfriend, she started unlocking it.  
14 *Id.* Before undoing the deadbolt, she looked through the peephole and realized it  
15 was not her boyfriend – though she did not immediately recognize the man on the  
16 other side of the door. *Id.* There was another loud bang and the man yelled "If you  
17 don't open this door, I'm going to kick it down!" *Id.* Fearing for her life, Minor 3  
18 ran to her bedroom and hid in the closet. *Id.* at ¶ 23. She then tried unsuccessfully to  
19 contact her boyfriend from her computer. *Id.*

20 Defendant came into the room and found Minor 3 hiding in the closet. *Id.* at ¶  
21 24. He grabbed her by the hair and demanded to know where her boyfriend was. *Id.*  
22 When Minor 3 responded that she did not know, Defendant put a firearm to her head  
23 and stated, "Come on you're going with me." *Id.* Minor 3 did not immediately move,  
24 so Defendant grabbed her by her hair and dragged her out of the closet. *Id.*  
25 Defendant went down the hall to an older female's room and demanded the female's  
26 phone and tablet. Minor 3 was behind Defendant with the firearm still pointed at her  
27 so that the older female was not able to see the gun. *Id.* Defendant then directed  
28 Minor 3 out of the apartment. *Id.* While walking from the apartment to the stolen

1 truck Defendant was driving, Minor 3 saw two individuals. Although Minor 3 tried  
2 to communicate that she was being kidnapped, the Defendant ordered her into the  
3 passenger side of the car at gunpoint. *Id.* at 25.

4 Defendant sped off from the apartment. Minor 3 asked Defendant why he was  
5 doing this, to which he responded, “If you don’t shut up, I’m going to do something  
6 to you. I have three bodies in here already.” *Id.* at ¶ 26. Minor 3 kept pleading to be  
7 released, but Defendant would just scream, “Shut up!” *Id.* Minor 3 did whatever she  
8 could to keep Defendant to keep him calm and try to gain his trust. *Id.* At one point,  
9 Defendant pulled over, put the firearm in his mouth and asked Minor 3 to pull the  
10 trigger. *Id.* at ¶ 27. She refused. Around this time, a car drove by, and Defendant got  
11 back on the main road. *Id.*

12 Defendant pulled off on to another side road and instructed Minor 3 to grab  
13 his leg and rub his penis. *Id.* at ¶ 28. When she resisted, he pulled the hammer back  
14 on the firearm and gave her the same instruction. Fearing for her life, she complied.  
15 *Id.* Even though she did not want to touch Defendant, Minor 3 also kissed Defendant  
16 when he stated, “you will see what happens if you don’t.” *Id.*

17 Defendant and Minor 3 stopped at a gas station in Spokane, Washington  
18 around 1:42 a.m. *Id.* at ¶30. Minor 3 assured Defendant that she would return after  
19 going inside to pay for the gas. Defendant let her go inside, after threatening that he  
20 would come into the store and shoot her if she did not return to the truck. *Id.*  
21 Defendant also threatened to kill Minor 3’s loved ones if she tried to escape. *Id.* Once  
22 inside, Minor 3 notified the clerk to call the police and immediately locked herself  
23 in the bathroom. *Id.* at ¶31. Minor 3 explained that she hid because she was terrified  
24 Defendant would come in, kill the clerk, and then find her. *Id.* Minor 3 stayed locked  
25 in the bathroom until police arrived. *Id.*

26 Even after Minor 3 escaped, Defendant’s crime spree was not over. Police  
27 observed the stolen truck driving on Second Avenue in Spokane. *Id.* at ¶34. When  
28 they tried to pull the truck over, Defendant led them on a high-speed chase that

1 concluded after Defendant decided to drive off road. *Id.* at ¶34. When he left the  
2 roadway, Defendant high-centered the truck on uneven terrain. *Id.* Police soon  
3 apprehended him. *Id.* The .22 revolver Defendant used to perpetrate his crimes was  
4 found inside the truck. *Id.* at ¶38.

#### 5 VICTIM IMPACT

6 L.C. and her grandchildren spent their Monday evening in the presence of a  
7 man with a gun, who fired multiple shots, and forced them from their home at gun  
8 point. L.C. and her grandchildren feared for their lives, not knowing how much  
9 ammunition Defendant had or whether Defendant would follow through on one of  
10 his many threats. This trauma did not stop at 10:18 p.m. when they escaped  
11 Defendant. This trauma and the events of that evening will continue to be a part of  
12 their lives.

13 From around 10:18 p.m. till 1:42 a.m., Minor 3 was alone with a man she did  
14 not know very well, with a gun to her head, not knowing if she would survive. She  
15 was abducted from the safety of her home and driven on dark back roads for hours.  
16 Minor 3 is lucky to have escaped, but she will forever remember the events of that  
17 evening—including the sexual assault Defendant perpetrated against her.

#### 18 SENTENCING CALCULATIONS

19 The government agrees with United States Probation that Defendant's total  
20 offense level is 39, criminal history category is IV, and the guideline range is 360 to  
21 life. ECF No. 55 at ¶172.

#### 22 SENTENCING FACTORS UNDER 18 U.S.C. § 3553(a)

23 In determining the appropriate sentence, this Court should consider the factors  
24 as set forth in 18 U.S.C. § 3553(a).

##### 25 1. The nature and circumstances of the offense

26 The circumstances of the offenses involve Defendant's kidnapping of four  
27 people, destruction of property, and use of a firearm. The kidnapping of L.C. and her  
28 two grandchildren was a horrifying experience in which they all feared for their lives.

1 ECF No. 55 at ¶11. Defendant came to L.C.'s home, unannounced, acting strangely,  
2 and then started shooting at walls, ceilings, and the air conditioner, which  
3 subsequently caught fire. *Id* at ¶12. After forcing the victims into L.C.'s pickup truck,  
4 he forced them to watch him burn down a trailer. *Id* at ¶13. Then back in the car,  
5 Defendant put the firearm in his mouth and asked the victims present, including a 9-  
6 year-old, to pull the trigger. *Id* at ¶16. Based on Defendant's behavior, it is shocking  
7 that L.C. and her grandchildren were not physically injured. Yet, while they may not  
8 have physical injuries, this incident will impact them for the rest of their lives.

9 The kidnapping of Minor 3 is just as harrowing as that of L.C. and her  
10 grandchildren – perhaps even more so. Minor 3 is 17 and was taken at gun point from  
11 her home at 10 p.m. ECF 55 at ¶ 22. While in the car with Defendant, he told her he  
12 already had killed three other people. *Id* at ¶ 26. As Defendant had done in the  
13 previous kidnapping, he put the gun in his mouth and instructed Minor 3 to pull the  
14 trigger. *Id* at ¶ 27. After pulling onto a dirt side road, Defendant pulled over and  
15 forced Minor 3 to rub his penis. When she refused, Defendant pulled back the  
16 hammer of the gun and held it to her head. *Id* at ¶ 28. While driving, Defendant  
17 threatened to murder Minor 3 and her loved ones if she tried to escape. *Id* at ¶30.  
18 Minor 3 was finally able to escape by locking herself in a gas station bathroom while  
19 the clerk called the police. *Id* at ¶ 31. Minor 3 endured a horrific experience that will  
20 alter her life. Being kidnapped from your home and violated while threatened with  
21 death, will forever be an experience that affects her.

## 22 2. History and Characteristics of Defendant

23 Defendant's criminal history is concerning. He was first arrested at age 12 in  
24 1999 for theft. ECF No. 55 at ¶78. From that year on, Defendant was in and out of  
25 custody for various charges. In 2009, at the age of 22, Defendant was charged and  
26 sentenced for an assault with a dangerous weapon *Id* at ¶108. Defendant was also  
27 charged in 2009 with first degree reckless firing of a weapon. *Id* at 119. Defendant's  
28

1 charges related to substance abuse also started as a minor. He had various charges  
2 for alcohol and drugs from an early age. *Id* at ¶78.

3 Defendant's criminal history demonstrates that he has engaged in several  
4 violent offenses, as well as a history of drug and alcohol abuse. Based on the length  
5 of the criminal record, it is clear that the prior stints of incarceration have had no  
6 impact on Defendant's behavior. This history demonstrates that Defendant poses a  
7 danger to the community and incarceration is warranted in this case. Additionally,  
8 Defendant was on supervised release when he committed the offenses to which he  
9 has now pled guilty. Defendant's crimes have escalated. He is a grave risk to the  
10 community, even when supervised. A lengthy sentence is absolutely necessary to  
11 protect the public.

12 3. The need for the sentence imposed to reflect the seriousness of the  
13 offense, promote respect for the law, provide just punishment, and  
14 protect the public.

15 The United States asks the Court to sentence the Defendant to 300 months,  
16 the maximum penalty allowed under the 11(c)(1)(C) plea agreement to be followed  
17 by five years of supervised release. In his prior cases, Defendant has been  
18 incarcerated for significant periods of time. For instance, in 2006, Defendant was  
19 sentenced to 53 months' custody for Second Degree Burglary. ECF No. 55 at ¶100.  
20 In 2011, Defendant was convicted in federal district court of Assault with a  
21 Dangerous Weapon and sentenced to 120 months' custody in connection with a drive  
22 by shooting. *Id.* at ¶108. Notwithstanding these lengthy sentences, Defendant is  
23 undeterred. He has continued to threaten and assault others despite his previous  
24 convictions and penalties for such behavior and despite being on supervised release.  
25 At this point, it is clear that a lengthy sentence is necessary – not necessarily as  
26 punishment – but to keep the community safe.

27 ///

28 ///



1        4. The need to avoid unwarranted sentence disparity among defendants with  
 2        similar records who have been found guilty of similar conduct.

3        The best way to ensure consistent sentences for similarly-situated Defendants  
 4 across courtrooms, districts, and the country is for courts to apply the sentencing  
 5 Guidelines in the same manner everywhere. *See United States v. Saeteurn*, 504 F.3d  
 6 1175, 1181 (9th Cir. 2007); *United States v. Parker*, 462 F.3d 273, 277 (3d Cir.  
 7 2006); *United States v. Boscarino*, 437 F.3d 634, 638 (7th Cir. 2006). The  
 8 Guidelines are the only normative way to accomplish that. In this case, a Guidelines  
 9 sentence of twenty-seven months properly accounts for “the need to avoid  
 10 unwarranted sentence disparities among defendants with similar records who have  
 11 been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6). Numerous courts  
 12 have recognized that sentencing within the Guidelines range serves as a bulwark  
 13 against unwarranted sentencing disparity. *See United States v. Guerrero-Velasquez*,  
 14 434 F.3d 1193, 1195 n.1 (9th Cir. 2006) (recognizing that guidelines “help to  
 15 maintain uniformity in sentencing throughout the country”); *United States v. Hunt*,  
 16 459 F.3d 1180, 1184 (11th Cir. 2006) (“The Guidelines . . . are an indispensable tool  
 17 in helping courts achieve Congress’s mandate to consider ‘the need to avoid  
 18 unwarranted sentence disparities’ among similarly situated defendants”) (quoting 18  
 19 U.S.C. § 3553(a)(6)); *United States v. Smith*, 445 F.3d 1, 7 (1st Cir. 2006) (noting  
 20 that “the guideline range . . . is the principal means of complying with” the goal of  
 21 avoiding unwarranted sentencing disparity).

22        The Ninth Circuit has specifically observed that a sentence consistent with the  
 23 guideline range is unlikely to be disparate because such a sentence “represents the  
 24 sentence that most similarly situated defendants are likely to receive.” *United States*  
 25 *v. Becerril-Lopez*, 541 F.3d 881, 895 (9th Cir. 2008). Thus, mindful that the  
 26 Guidelines must be “the starting point and the initial benchmark,” *United States v.*  
 27 *Carty*, 520 F.3d 984, 991–92 (9th Cir. 2008), the United States submits that a  
 28 sentence of 300 months, which is slightly below the guidelines, will avoid



1 | unwarranted sentencing disparity and is appropriate in this case. A sentence of  
2 | anything less, especially on these facts, would be disproportionately low considering  
3 | Defendant's history and the harm inflicted on his four victims in this case, including  
4 | three minor children.

5 | **GOVERNMENT'S SENTENCING RECOMMENDATION**

6 | The government recommends the Court impose a sentence of three hundred-  
7 | -months imprisonment and a five-year term of supervised release. Although this is  
8 | lengthy sentence, it actually is below the guidelines range, as determined by  
9 | probation. In short, a sentence of three-hundred months' imprisonment and five  
10 | years of supervised release is the appropriate, taking into consideration of all the  
11 | relevant factors under 3553(a).

12 | Respectfully submitted on August 2, 2022.

13 |  
14 | Vanessa R. Waldref  
15 | United States Attorney

16 | s/ Richard R. Barker  
17 | Richard R. Barker  
18 | Assistant United States Attorney  
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**CERTIFICATION**

I hereby certify that on August 2, 2022, I electronically filed the foregoing  
with the Clerk of the Court and counsel of record using the CM/ECF System.

*s/Richard R. Barker*

Richard R. Barker

Assistant United States Attorney